

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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| Illinois Commerce Commission | : | |
| On its Own Motion | : | |
| | : | |
| -vs- | : | |
| | : | Docket No. 03-0703 |
| Northern Illinois Gas Company | : | |
| d/b/a Nicor Gas Company | : | |
| | : | |
| Reconciliation of revenues collected | : | |
| under gas adjustment charges with | : | |
| actual costs prudently incurred. | : | |

BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

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Table of Contents

| | <u>Page</u> |
|---|-------------|
| I. INTRODUCTION | 1 |
| II. ARGUMENT AND EXCEPTIONS..... | 2 |
| A. Legal Standard [II.] | 2 |
| B. Factual Background – HUB Services [III.E.] | 3 |
| C. Nicor Gas’ Use of HUB Services [V.,A.] | 4 |
| 1. Staff Position [V.,A.,1.] | 4 |
| 2. Dr. Rearden’s first adjustment – “non-PGA HUB Revenues” | 5 |
| 3. Dr. Rearden’s second adjustment – adjustment for increase in gas costs due to the Company’s use of storage..... | 11 |
| D. Recommended Reconciliation and Factor O | 14 |
| E. Attachment A | 16 |
| III. CONCLUSION..... | 17 |

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ILLINOIS COMMERCE COMMISSION**

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On its Own Motion**

-vs-

**Northern Illinois Gas Company
d/b/a Nicor Gas Company**

**Reconciliation of revenues collected
under gas adjustment charges with
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**BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.830) of the Illinois Commerce Commission (“Commission”), respectfully submits this Brief on Exceptions to the Proposed Order issued by the Administrative Law Judge (“ALJ”) on July 7, 2015 (“Proposed Order”, “PO” or “ALJPO”).

I. INTRODUCTION

Initial Briefs (“IB”) and Reply Briefs (“RB”) were filed on April 29, 2015 and May 27, 2015, respectively by Staff, Northern Illinois Gas Company d/b/a Nicor Gas (“Nicor” or “Company” or “Nicor Gas”), and jointly by the Citizens Utility Board (“CUB”) and the People of the State of Illinois by Attorney General Lisa Madigan (“AG”) (collectively “CUB-

AG”). As indicated above, the ALJ issued the PO on July 7, 2015. Staff takes exception to the ALJPO as set forth below.

II. ARGUMENT AND EXCEPTIONS

A. Legal Standard [II.]¹

Argument

The ALJPO sets forth the purchased gas adjustment (“PGA”) charge legal standard from Section 9-220 of the Illinois Public Utilities Act (“Act”) and the standard under which the Commission reviews prudence, but does not address that the burden of proof is on a utility to establish the prudence of its PGA charges. For a more complete statement of the law, Staff recommends modifications to the ALJPO as set forth below.

Proposed Modification

(ALJPO, 2-3)

* * *

Legal Standards

* * *

The Commission has a well-established articulation of the standard by which utility prudence is reviewed under Section 9-220:

Prudence is that standard of care which a reasonable person would be expected to exercise under the circumstances encountered by utility management at the time decisions had to be made. In determining whether or not a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.

Imprudence cannot be sustained by substituting one’s judgment for that of another. The prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being “imprudent”.

¹ The letter and/or numeral in bracket refers to the corresponding section of the ALJPO.

(In re: Commonwealth Edison Company, Docket No. 84-0395, Order at 17 (October 7, 1987). See also Illinois Power Co. v. Illinois Commerce Comm'n, 339 Ill. App. 3d 425, 428 (5th Dist. 2003).)

The burden of proof is on Nicor Gas to establish the prudence of its costs of gas purchases and related costs. (220 ILCS 5/9-220(a)). Nicor Gas has the burden to prove this by a preponderance of the evidence. (5 ILCS 100/10-15). Preponderance of the evidence has been defined as the evidence that is more probably true than not. (See, e.g., *Witherell v. Weimer*, 118 Ill. 2d, 321, 336, 515 N.E.2d 68 (1987)).

* * *

B. Factual Background – HUB Services [III.E.]

Argument

The ALJPO in its discussion of HUB services and the tariff on file at the FERC suggests that there can be no cross subsidization of the HUB services. However as shown during the cross examination of Nicor Gas' witness, the FERC rate only addressed the maximum that could be charged for the service and did not address the minimum. That is, the FERC tariff allowed a price of zero for the services (i.e. Nicor could sell the service for free) if the two parties reached that agreement. (Tr. 139-142, March 17, 2015.) To correct that erroneous implication, Staff recommends the following changes as set forth below.

Proposed Modification

(ALJPO, 5-6)

* * *

In 2003, HUB services included interstate services offered under the jurisdiction of FERC and intrastate services under the Commission's jurisdiction. (Nicor Ex. 6.0R at 7.) FERC first approved the Company's interstate HUB tariffs in 1992. (Id). Nicor Gas offers intrastate HUB services pursuant to its Commission-approved Rate 21, Intrastate Transportation and Storage Services, which was first approved in 1998. The Commission-approved rates and services were contained in an Operating Statement on file with FERC, and also were

subject to FERC review and approval. (Nicor Ex. 7.0R at 27.) Nicor Gas notes that the maximum rates charges set for HUB services were cost-based, wherein however, the revenues the Company recovered depended upon market prices which may not cover Nicor Gas' its costs of providing HUB services pursuant to its tariffed charges since the FERC tariff only set a maximum price but not a minimum. (Nicor Ex. 6.0R at 8.) (Tr. 139-142, March 17, 2015)

* * *

C. Nicor Gas' Use of HUB Services [V.,A.]

1. Staff Position [V.,A.,1.]

Argument

Staff takes exception to the ALJPO regarding Staff's position. Staff's exceptions address the scope of Staff witnesses Dr. Rearden's and Mr. Maple's testimony. Nicor Gas in its initial briefs claimed that there was an inconsistency between Staff witness Maple's testimony and Dr. Rearden's testimony. As Staff explained in its RB, there is no inconsistency between the Staff testimony for several reasons. First, the scope of each witness's testimony was different due to the fact that one witness, Mr. Maple, is an engineer and the other, Dr. Rearden, is an economist. Second, Mr. Maple did not address the HUB in testimony. Dr. Rearden was the only Staff witness who specifically addressed the HUB in testimony. Dr. Rearden does not argue that the purchases were imprudent, but rather that they were imprudent because they unnecessarily raised gas costs. ("So the disallowance that we seem to be discussing here is not related to imprudently buying gas in the sense that the utility pay above marked price, but that it was buying gas because it had loaned out gas to Hub customers and needed to support those loans.") (Tr. 179:1-6, March 17, 2015.) In order to reflect the fact that Dr. Rearden and Mr. Maple

focused on different aspects of Nicor Gas' operations, Staff recommends modifications to the ALJPO, as set forth below.

Proposed Modification
(ALJPO, 7)

* * *

The only Staff witness who addressed Nicor Gas' use of HUB services was Dr. Rearden, an economist. Staff witness David Rearden provided two reasons that HUB services used services or assets whose costs are recovered in the PGA. The only source for the gas loaned to HUB customers was PGA gas and displacement. The PGA gas was the only source of gas that Nicor could loan to HUB customers. Nicor witness Sherwood agreed that there is a tradeoff between deliveries from an interstate pipeline and deliveries from Nicor's storage fields. (Tr. at 50, March 17, 2015.) In addition, he admits that gas purchased to supply PGA customers is "co-mingled" with transportation customers' gas and line-pack. Finally, while he maintains that PGA gas was not used to support the HUB loans, he does not indicate the HUB's gas source. (*Id.* at 102-105.)

* * *

2. Dr. Rearden's first adjustment – "non-PGA HUB Revenues"

With respect to Dr. Rearden's first adjustment, Staff has a primary argument and an argument in the alternative. Staff's primary argument is that the Commission's rules require all HUB revenues to flow through the PGA. Staff's argument in the alternative is that if the Commission believes some but not all HUB revenues flow through the PGA, Nicor Gas failed to meet its burden of proof in showing that the revenues it chose not to flow through the PGA were not subject to the general rule that HUB revenues were to offset PGA costs.

Primary Argument

The ALJPO makes two fundamentally wrong conclusions to support its overall wrong conclusion rejecting Staff's proposed disallowances related to Nicor Gas' HUB activities in 2003. (ALJPO, 24.) The first error by the ALJPO is the conclusion that Staff's analysis was a hindsight review. (ALJPO, 23.) ("The Commission believes that both propositions are based on hindsight review.") The second error by the ALJPO is the conclusion that there is no record to support Staff's adjustment. (Id. at 24.) ("The adjustments proposed by Staff and CUB-AG on Nicor Gas' HUB activities are not supported by the record.") A hindsight review is one that considers facts that were not available at the time decisions were made to determine the prudence of a decision. (Order, Docket No. 84-0395, October 7, 1987, p. 17.) It is impossible for Dr. Rearden's first adjustment to be based upon hindsight. Dr. Rearden's first adjustment is based upon application of Section 525.40(d) of the Commission's rules and there should be no dispute that Section 525.40(d) of the Commission's rules was in place during 2003 at the time Nicor Gas was making its decisions.

With regard to the second error by the ALJPO, that the record does not support Dr. Rearden's first adjustment, the ALJPO ignores the fact that Dr. Rearden provided narrative testimony on the first adjustment and Staff addressed the first adjustment in its IB and RB. (ICC Staff Ex. 4.0 Public, 12:246 – 13:281.) Dr. Rearden's testimony addressed the fact that under Section 525.40(d), if any costs used to supply a service are recovered in the PGA, then all revenues must be used to offset those costs. (ICC Staff Ex. 4.0 Public, 12:246-252.) Dr. Rearden testified that due to displacement and the fact that the only source for the gas loaned to HUB customers was PGA gas (Id., 12:253-1:277), all the revenues from the HUB transactions should flow to the PGA. Staff both in its IB and RB again addressed the issue of Nicor failing to offset PGA costs with all of the

HUB revenues. (Staff IB, 7-8; Staff RB, 4-6) It is simply wrong for ALJPO to state that Staff's proposed adjustment is not supported by the record.

Alternative Argument

With respect to Dr. Rearden's first adjustment, the ALJPO ignores the fact that the burden of proof is on Nicor Gas to establish the prudence of its cost of gas purchases and related costs. (220 ILCS 5/9-220(a)) As Staff argued in the alternative, if the Commission disagrees with Staff that some but not all HUB revenues should be credited to the PGA, Nicor Gas has failed to show that Staff's \$8,209,614 adjustment for what Nicor Gas claims are "non-PGA revenues" are not subject to the general rule that HUB revenues were to offset PGA costs. (Staff IB, 7.) The Company failed to provide relevant detailed evidence that the over \$8 million in HUB revenues should not flow through the PGA. The Company's own testimony supports Staff's position that Nicor failed to meet its burden. The only Nicor witness who responded to Dr. Rearden's testimony was Mr. Gulik, an outside consultant, who did not address whether the revenues from the "non-PGA revenues" related to transaction for a HUB that "facilitates the movement of gas between and among interstate pipelines attached to the Company's system. The Hub also permits storage of gas for short periods of time before redelivery to an interstate pipeline. The Hub also will accommodate gas title transfers." (Order, Docket No. 93-0320, March 13, 1996 at 1.) In addition, Mr. Gulik offered no detailed testimony that the "non- PGA revenues" were not the off-system revenues, which the 1995 Nicor rate case order, Docket No. 95-0219, clearly ordered to be offset against costs in Nicor's PGA. (Staff IB, 10-11.)

Since the Company failed to provide detailed evidence to the contrary, it has not met its burden of proof and the over \$8 million in “non-PGA revenues” should be subject to the general PGA rule that off system storage revenues flow through the PGA, as proposed by Staff witness Dr. Rearden and therefore the Company’s PGA costs should be adjusted downward by \$8,209,614.

Proposed Modifications

Primary Proposed Modification

(ALJPO, 23)

Commission Analysis and Conclusion

Pursuant to Section 9-220 of the Act, the Commission must determine whether Nicor Gas’ supply purchases in 2003 were prudent and must reconcile the amounts collected by Nicor Gas with the actual costs of gas. This proceeding pertains to Nicor Gas’ reconciliation of Gas Supply Costs charges collected with its actual cost of gas distributed as recorded on the books of Nicor Gas for the 12 months ending December 31, 2003. As stated above, the prudence standard of care is what a reasonable person would have done at the time the decisions were made. Hindsight review is not permissible. (*In re: Commonwealth Edison Company*, Docket No. 84-0395, Order at 17 (October 7, 1987). See also *Illinois Power Co. v. Illinois Commerce Comm’n*, 339 Ill. App. 3d 425, 428 (5th Dist. 2003)) The burden of proof is on Nicor Gas to establish the prudence of its costs of gas purchases and related costs. (220 ILCS 5/9-220(a)). Nicor Gas has the burden to prove this by a preponderance of the evidence. (5 ILCS 100/10-15).

Both Staff and CUB-AG dispute Nicor Gas’ ~~actions based entirely on information available only after the reconciliation period in question.~~ Staff proposes two adjustments, one based on the premise that because HUB services use assets whose costs are recovered in the PGA, any HUB revenue must be offset by PGA costs. Staff’s second adjustment is to compensate ratepayers for the increase in PGA costs that Nicor Gas caused when it imprudently loaned gas to HUB customers from the non-PGA HUB. CUB-AG argue that Nicor Gas was required to purchase more high cost gas during February and March 2003 to serve sales customers because gas in storage was utilized to provide third-party HUB services. Staff and CUB-AG both question Nicor Gas’ operational activity related to HUB transactions.

With respect to Staff’s first adjustment that all HUB revenues must be credited to the PGA, the Commission agrees with Staff. Under the Commission rules, in particular Section 525.40(d) “[r]ecoverable gas costs shall be offset by the revenues derived from transactions at rates that are not subject to the Gas

Charge(s) if any of the associated costs are recoverable gas costs as prescribed by subsection (a) of this Section.” The Commission agrees with Dr. Rearden that HUB services used services or assets whose costs were recovered in the PGA. As Dr. Rearden explained the only source of gas for the HUB customers was PGA gas (Staff Ex. 4.0 (Public), 12:250-252.) and due to displacement (gas received by one entity is not dependent on the contractual source) (Staff Ex. 4.0 Public, 12:255-277)), the HUB services used services or assets whose costs were recovered in the PGA. The Commission recognizes its prior orders in Docket Nos. 93-0320 and 95-0219. While those orders did allow different ratemaking treatment for certain HUB transactions, Commission orders are not res judicata. (*Lakehead Pipeline Co. v. Illinois Commerce Commission*, 296 Ill.App.3d 942, 956 (1998)) The Commission can depart from prior orders, as long as it provides a reasoned basis for doing so. (*Citizens Utility Board v. Illinois Commerce Commission*, 166 Ill.2d 111, 132 (1995)) The Commission finds that Dr. Rearden’s testimony provides a reasoned basis for the Commission to apply Section 525.40(d) to all the revenues, both “PGA HUB revenues” and “non-PGA HUB revenues” from Nicor Gas’ HUB transactions.

* * *

Based upon the Commission’s adoption of Staff’s first and second adjustment, tThe Commission concludes that Nicor Gas’ supply costs and purchases in 2003 were imprudent and Nicor Gas failed to properly record all its HUB revenues to the PGA, and that its reconciliation of the related costs was proper. The adjustments proposed by Staff and CUB-AG on for Nicor Gas’ HUB activities are well not supported by the record. The Commission believes that both propositions are based on hindsight review. While Nicor Gas may have acted in accordance with its FERC- and Commission-approved tariffs, as well as it did not show that it correctly applied the Commission Orders in effect in 2003. Thus, the Commission accepts rejects Staff’s two and CUB-AG’s proposed disallowances related to the Company’s HUB loan activities in 2003.

Alternative Proposed Modification

(ALJPO, 23)

Commission Analysis and Conclusion

Pursuant to Section 9-220 of the Act, the Commission must determine whether Nicor Gas’ supply purchases in 2003 were prudent and must reconcile the amounts collected by Nicor Gas with the actual costs of gas. This proceeding pertains to Nicor Gas’ reconciliation of Gas Supply Costs charges collected with its actual cost of gas distributed as recorded on the books of Nicor Gas for the 12 months ending December 31, 2003. As stated above, the prudence standard of

care is what a reasonable person would have done at the time the decisions were made. Hindsight review is not permissible. (*In re: Commonwealth Edison Company*, Docket No. 84-0395, Order at 17 (October 7, 1987). See also *Illinois Power Co. v. Illinois Commerce Comm'n*, 339 Ill. App. 3d 425, 428 (5th Dist. 2003)) The burden of proof is on Nicor Gas to establish the prudence of its costs of gas purchases and related costs. (220 ILCS 5/9-220(a)). Nicor Gas has the burden to prove this by a preponderance of the evidence. (5 ILCS 100/10-15).

Both Staff and CUB-AG dispute Nicor Gas' actions ~~based entirely on information available only after the reconciliation period in question.~~ Staff proposes two adjustments, one based on the premise that because HUB services use assets whose costs are recovered in the PGA, any HUB revenue must be offset by PGA costs. Staff's second adjustment is to compensate ratepayers for the increase in PGA costs that Nicor Gas caused when it imprudently loaned gas to HUB customers from the non-PGA HUB. CUB-AG argue that Nicor Gas was required to purchase more high cost gas during February and March 2003 to serve sales customers because gas in storage was utilized to provide third-party HUB services. Staff and CUB-AG both question Nicor Gas' operational activity related to HUB transactions.

With respect to Staff's first adjustment that all HUB revenues must be credited to the PGA, the Commission disagrees with Staff that Nicor Gas was required under the PGA to credit all HUB revenues to the PGA. The Commission's order in Docket No. 93-0320 allowed for different ratemaking treatment for certain HUB transactions. A subsequent Commission order in Docket No. 95-0219, was consistent on this same point. Some HUB revenues were to be included in base rates and others were to be credited to the PGA. (Order, Docket No. 95-0219, April 3, 1996, at 17.) While Commission orders are not res judicata, the Commission declines to deviate from its prior orders in Docket Nos. 93-0320 and 95-0219. However, under the orders Docket Nos. 93-0320 and 95-0219, the HUB revenues that were not required to flow through the PGA were for a HUB that "facilitates the movement of gas between and among interstate pipelines attached to the Company's system. The Hub also permits storage of gas for short periods of time before redelivery to an interstate pipeline. The Hub also will accommodate gas title transfers." (Order, Docket No. 93-0320, March 13, 1996 at 1.) In this proceeding, Nicor Gas, which has the burden of proof, has failed to present evidence that the over \$8 million in what it calls are non-PGA HUB revenues were for the HUB as described in Docket Nos. 95-0219 and 93-0320. Accordingly, due to Nicor Gas not meeting its burden of proof, the Commission adopts Staff witness Rearden's first adjustment of \$8,209,614 to the Company's 2003 PGA reconciliation.

* * *

Based upon the Commission's adoption of Staff's first and second adjustment, ~~t~~The Commission concludes that Nicor Gas' supply costs and purchases in 2003 were imprudent and Nicor Gas failed to properly record all its HUB revenues to the PGA, ~~and that its reconciliation of the related costs was proper.~~ The adjustments proposed by Staff and CUB-AG ~~on for~~ Nicor Gas' HUB activities are well not supported by the record. ~~The Commission believes that~~

~~both propositions are based on hindsight review. While Nicor Gas may have acted in accordance with its FERC- and Commission-approved tariffs, as well as it did not show that it correctly applied the Commission Orders in effect in 2003. Thus, the Commission accepts rejects Staff's two and CUB-AG's proposed disallowances related to the Company's HUB loan activities in 2003.~~

3. Dr. Rearden's second adjustment – adjustment for increase in gas costs due to the Company's use of storage

Argument

The ALJPO incorrectly dismissed Staff's second proposed disallowance based on two points. First, it asserted that the disallowance was based upon hindsight analysis. Second, the PO concludes that HUB transactions were unrelated and unconnected to gas supplied to sales customers. Both conclusions are wrong.

Staff did not base its second disallowance on hindsight analysis. Staff demonstrated that the HUB transactions were imprudently entered into by pointing out that Nicor, at the time it entered into its HUB transaction, did not investigate the prudence of any individual HUB transaction. Nicor as a public utility is obligated to demonstrate that its actions are prudent, and Nicor failed to meet that obligation. Nicor simply assumed that the transactions were not only costless, but benefitted ratepayers by helping empty the storage aquifers. By that logic, all HUB transactions at any price are prudent. However, Nicor presented no evidence for the value of these benefits relative to the market value of the storage. In other words, it did not examine whether ratepayers were better off using storage for HUB loans or for ratepayers. Nicor assumed that the HUB loans were costless. (Nicor Gas Ex. 7.0, 5:103-104.) The analysis Nicor conducted before the reconciliation period mainly examined how much storage it could use for HUB transactions whose revenues were not used to offset PGA costs.

Staff analysis used 2003 market prices to calculate the value of the imprudence. Given that Nicor imprudently entered into the HUB transactions, the cost imposed on ratepayers by Nicor providing the HUB services needed to be evaluated. The use of 2003 market prices does not constitute hindsight analysis, but rather is a method to estimate how much Nicor's imprudence cost ratepayers in 2003.

Staff detailed above the reasons why HUB services and sales customers supply are inter-related. In short, if more gas is withdrawn to support HUB services, there is less storage gas available to supply sales customers. That necessarily requires Nicor to purchase more flowing gas to support the HUB services. Thus, providing HUB services requires Nicor to have a portfolio of services that includes more flowing gas purchases than if it did not provide HUB services. Thus, Nicor incurred a cost to provide HUB services that was the benefits provided by storage's natural hedge. Since Nicor did not examine or investigate this tradeoff, it failed to show that its HUB transactions were prudent.

Proposed Modification

(ALJPO, 23-24)

* * *

With respect to Staff's second adjustment, while tThe record indicates that most of the Company's gas supply planning activity would have occurred well before the 2002-2003 winter heating season which starts around November 1st each year, the Company is still responsible for imprudent behavior that takes place during the reconciliation period. It is the Commission's understanding Nicor repeatedly argued that HUB activities only effect the use of on-system storage capacity that does not relate to the provision of services to the Company's sales customers. The Commission also understands that HUB related storage capacity is a subpart of the level of capacity allocated to transportation customers pursuant

~~to tariffs. In the Commission's~~ In this view, the Company took advantage of unutilized transportation customer's storage capacity that was not available to sales customers.

~~Thus, t~~The record shows that Nicor Gas ~~did not and does not~~ purchased gas to satisfy HUB parks or to repay HUB loans. ~~Gas for this is secured by third parties and sales customers do not bear any commodity costs related to HUB activities.~~ The Commission concludes that these loans ~~did not~~ impacted the gas ~~that was~~ available in storage to Nicor to supply ~~for~~ sales customers. ~~The Commission understands that HUB storage capacity and sales customers' storage capacity are two separate and distinct considerations.~~

~~The Commission finds that any costs Nicor Gas did incur related to the provision of HUB services were recovered from HUB customers pursuant to charges in approved tariffs that specifically address HUB services. The Commission observes as noted above that believes the tariffs were either FERC or ICC tariffs in effect at the time and there are no unregulated HUB services. However, as also noted above, the actual prices paid for HUB services resulted from negotiations with HUB customers in a free market. Nicor never examined whether any given HUB transaction provided revenues above cost. Nicor simply assumed that all HUB transactions had zero costs.~~

The Commission notes and no party disputed that Nicor Gas also had to cycle on system storage inventory in order to protect its aquifers. The record shows that the Company must plan for and identify required inventory and pressure targets by way of injection and withdrawal activity for each aquifer field for each day, month, and season. Without such planning, the Commission believes actual storage injection and withdrawal activity could have a detrimental effect on how the Company's storage fields will perform in the short-term and the long-term. The Commission understands that if the Company fails to sufficiently exercise each aquifer field it may result in reduced daily withdrawal deliverability of the fields in addition to risking a portion of working gas inventory in future winters. This cost associated with reduced underground storage availability would be borne by sales customers. However, as discussed below, neither Staff nor CUB-AG based their proposed disallowances upon different storage usage than Nicor's actual storage usage. Therefore, Nicor's claim that its HUB withdrawals were critical to cycling its storage are incorrect. Staff and CUB-AG implicitly assumed that Nicor could supply its sales customers by altering its gas purchases.

The Commission finds that based on the record, ~~Staff and CUB-AG have~~ has provided ~~no~~ substantive evidence that demonstrates that the Company's gas supply purchases and costs were imprudent and or improper. ~~In the Commission's view, Staff seems to be interchanging "off-system transactions" with HUB transactions, which are not interchangeable. The Commission is not convinced by Staff's evidence claim that the HUB activities led to additional costs for Nicor Gas sales customers. The Commission finds that CUB-AG's position was not substantiated by the record. The record shows that Nicor Gas' use of HUB services did not impact affected the amount of gas in storage available for to supply sales customers. CUB-AG's proposed disallowances are based on pricing information not available when the Company entered into the loan agreements.~~

Based upon the Commission's adoption of Staff's first and second adjustments, ~~t~~The Commission concludes that Nicor Gas' supply costs and purchases in 2003 were imprudent and Nicor Gas failed to properly record all its HUB revenues to the PGA, ~~and that its reconciliation of the related costs was proper.~~ The adjustments proposed by Staff ~~and CUB-AG on for~~ Nicor Gas' HUB activities are well ~~not~~ supported by the record. ~~The Commission believes that both propositions are based on hindsight review. While Nicor Gas may have acted in accordance with its FERC- and Commission-approved tariffs, as well as but it did not show that it correctly applied the Commission Orders in effect in 2003.~~ Thus, the Commission accepts ~~rejects~~ Staff's two ~~and CUB-AG's~~ proposed disallowances related to the Company's HUB loan activities in 2003.

D. Recommended Reconciliation and Factor O²

Argument

If the Commission adopts Staff's recommended reconciliation for 2003 and the related Factor O, which reflects Staff's adjustment related to the HUB, which it should, then the Commission's final order should include a new section, V.B., addressing the reconciliation and Factor O in the body of the order and the Findings and Ordering Paragraphs would also require modification.

Staff recommended that the Commission accept the reconciliation of revenues collected under the purchased gas adjustment clause with actual costs as reflected on Staff Exhibit 3.0, Schedule 3.01, Column (d), as set forth in Appendix A to Staff's initial brief. That reconciliation reflects Staff's HUB adjustment.

Only Staff addressed the issue of the timing of any refund ordered by the Commission. As Staff set forth in Staff's IB and RB, the Commission should direct Nicor Gas to refund the Factor O amount of \$18,476,028 in the first monthly PGA filing after the

² While the ALJPO includes an Attachment A which sets forth the reconciliation and includes a Factor O consistent with its Findings and Ordering Paragraphs, the ALJPO does not have a section in the order addressing the reconciliation or Factor O. Factor O represents the additional over or under recovery ordered by the Commission. (83 Ill. Admin. Code Section 5256.60.)

final order in this proceeding is entered, including any accrued interest from January 1, 2004 to the date of the final order, using the interest rate applicable to each year from January 1, 2004 through the year in which a final order is entered. (Staff IB, 15; Staff RB, 15-16.)

Proposed Modification

(ALJPO, 24-25)

B. Recommended Reconciliation and Factor O

Staff recommended that the Commission accept the reconciliation of revenues collected under the purchased gas adjustment clause with actual costs as reflected on Staff Exhibit 3.0, Schedule 3.01, Column (d), as set forth in Appendix A to Staff's initial brief. Staff's reconciliation reflects Staff's adjustment for imprudence related to certain HUB transactions. Consistent with the Commission conclusion that Nicor Gas acted unreasonably and imprudently in its purchased gas adjustment transactions due to certain HUB transactions, the Commission adopts Staff's reconciliation.

Only Staff addressed the issue of the timing of any refund back to customers ordered by the Commission. The Commission agrees with Staff that Nicor Gas should refund the Factor O amount of \$18,476,028 in the first monthly PGA filing after the final order in this proceeding is entered, including any accrued interest from January 1, 2004 to the date of the order, using the interest rate applicable to each year from 2004 through the year in which a final order is entered.

Findings and Ordering Paragraphs

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Northern Illinois Gas Company d/b/a Nicor Gas Company is an Illinois corporation engaged in the distribution of natural gas to the public in the State of Illinois and, as such, is a "public utility" as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the evidence and the record and are hereby adopted as findings of fact;

- (4) as discussed in the prefatory portion of this Order, the evidence shows that during the year ended December 31, 2003 Northern Illinois Gas Company d/b/a Nicor Gas Company acted unreasonably and imprudently in its purchased gas adjustment transactions Northern Illinois Gas Company d/b/a Nicor Gas Company's Purchased Gas Adjustment costs for the year ended December 31, 2003 were reasonably and prudently incurred;
- (5) Northern Illinois Gas Company d/b/a Nicor Gas Company's calculations for its 2003 Rider 6 reconciliation, as modified to include Staff's adjustment in the amount of ~~\$50,354~~\$18,476,028 to the ~~Commodity Gas Costs Factor AQ~~, are accurate; and
- (6) ~~Staff's Northern Illinois Gas Company d/b/a Nicor Gas Company's 2003 Rider 6 reconciliation set forth in Attachment A to this Order shall be approved; and~~
- (7) Nicor Gas shall refund the Factor O amount of \$18,476,028 including any interest from January 1, 2004 to the date of this order using the interest rate applicable to each year from 2004 through the year this final order is entered in the first monthly PGA filing after this final order is issued.

IT IS THEREFORE ORDERED that the ~~Staff's reconciliation submitted by~~ for Northern Illinois Gas Company d/b/a Nicor Gas Company under Rider 6 – Gas Supply Cost for the year ended December 31, 2003, which includes ~~inclusive of~~ the parties' agreed-to adjustments and Staff's adjustment of \$18,476,028 as detailed herein, and summarized in Attachment A, is hereby approved.

IT IS FURTHER ORDERED that any objections, motions or petitions filed in this proceeding that remain unresolved should be disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Act and 83 Illinois Administrative Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

E. Attachment A

Argument

For the reasons set forth above, the Commission should adopt Staff's Appendix A, page 1 of 3, from Staff's IB as Appendix A to the final order.

Proposed Modification
(ALJPO, Appendix A)

If the Commission adopts both of Dr. Rearden's adjustments, which it should, then the ALJPO, Appendix A should be replaced with Staff's Appendix A, page 1 of 3 from Staff's IB, deleting "Staff IB" and "page 1 of 3" from the header in Staff's Appendix A.

If the Commission adopts just one of Dr. Rearden's adjustments, then Staff's Appendix A, page 1 of 3 from Staff's IB would need to be modified accordingly.

III. CONCLUSION

For the reasons set forth above and in Staff's IB and RB, Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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August 14, 2015

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Illinois Commerce Commission*